



Rule 3001, et. seq, of the U.S. Bankruptcy Rules.

In resolving the issue before the Court the Debtor would argue that two important principles should be applied in this case. The first principle is that in construing and applying a Confession of Judgment, Rule 68.1 is to be strictly construed to since the statute authorizing a Confession of Judgment is in derogation of common law. Rivers v Rivers 223 S.E.2ne 568 (1976). Strictly construing a rule requires the Court to find that the proponent is clearly entitled to the relief sought and that there is no other alternative in resolving the issue before the court in favor of the responding party. In other words strictly construing a statute or rule requires the court to hold the proponent to a higher standard of review of its position. Under the strict scrutiny principle, the Creditor has failed to demonstrate that it is entitled to a claim for the amount it seeks.

The second argument against the Creditor's position is based on the plain meaning of Rule 68.1(e) of the Rules of Civil Procedure. Rule 68.1(e) states in part "...no judgment by confession shall be held to be *res judicata* as to any fact in any civil action except in an action on the judgment confessed". The case before the court is not an action on the judgment confessed. It is a claim and an objection to a claim in a bankruptcy proceeding. Thus, the Confession of Judgment is not *res judicata* as to the amount due the Creditor on its claim. The amount of the claim is to be established by the Creditor and the Creditor has the burden to prove its claim. The amount stated in the Confession of Judgment is not determinative or *res judicata* as to the amount of the claim. Since the Creditor has offered no evidence as to the amount of the claim except for the Confession of Judgment, the Creditor has not met its burden of proof and the Debtor's objection should be sustained.

## CONCLUSION

In light of the principle that Rule 68.1 must be strictly construed together with the fact Rule 68.1 is not *res judicata* as to any facts contained in the Confession of Judgment, the debtor respectfully urges the court to find that the creditor has failed to meet its burden of proof in establishing the amount of the claim and request the court to sustain the Debtor's Objection to the Creditor's Claim as filed.

Respectfully submitted, this, the 25<sup>th</sup> day of June, 2014.

**MEADOWS & ADERHOLD, P.A.**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that copy of the Debtor's **Memorandum of Law in Support of the Debtor's Objection to the Claim of Buck Horn Construction Company, Inc.** was served by

Electronic means and/or first class mail, postage prepaid, to the parties indicated below at their respective addresses:

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This the 25<sup>th</sup> day of June, 2014.

**MEADOWS & ADERHOLD, P.A.**

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